

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 535 of 1996

With

SPECIAL CIVIL APPLICATION NO. 5175 Of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

HEERALAL CHAKUBHAI KAPTA

Appearance:

IN Spl.C.A. No. 535 of 1996

MR DA BAMBHANIA With Mr.T.H.Sompura for Petitioners

MR PRASHANT G DESAI for Respondent No. 1 to 7

MR S.P.DAVE,LD.GOVT.COUNSEL for Respondent no.8

IN Spl.C.A. No. 5175 of 1996

Mr. Prashant Desai For Petitioners

Mr. TH Sompura,Ld. Govt.Counsel for Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 29/01/97

CAV JUDGEMENT

The present orders shall govern the disposal of these two petitions arising under Article 226 of the Constitution of India and directed against the orders pronounced by the Urban Land Tribunal & Ex-Officio Addl. Chief Secretary to the Government dated March 30, 1996, in ULC Appeal No. Jamnagar 18/93.

The declarant had filed Form No.1 under Section 6/1 of the Urban Land (Ceiling & Regulation) Act, 1976 and the Competent Authority had issued the necessary notice under Section 8(1) of the Act and had issued draft statement also. The Competent Authority ultimately had decided the proceedings and accordingly notice under Section 9 of the Act was ordered to be issued. It was in fact issued on January 06, 1986 and the final statement came to be received by the declarant. The Competent Authority has passed the order saying that, the total area of 28278.10 sq. meters of land was the excess vacant land. This orders dated January 06, 1986 came to be challenged before the Urban Land Tribunal at Ahmedabad by filing the above said appeal. The Tribunal had come to the conclusion that the dispute centered round the property or the land situated at Jamnagar bearing Survey No. 129 and that it was the ancestral property. After the death of the deceased Chaku Bhagwanji, the land along with certain other lands came to be inherited by two sons, namely Hiralal Chaku and Narayan Chaku, both of them were having equal shares in the land in question. Later on, out of this two brothers, Narayan Chaku had died on June 24, 1970 at Jamnagar. But before his death, Narayan Chaku had executed a valid Will on February 02, 1969 and had bequeathed his land under the Will to certain persons. The Urban Land Tribunal has preferred to place the matter in a Tabular form which can be reproduced as under, along with the necessary findings.

" In the above mentioned disputed property both the brothers Hiralal Chaku and Narayan Chaku having shares in equal proportionate. Out of this two brothers Narayan Chaku died on 24-6-70 in Jamnagar and during his lifetime on 2-2-69 he made a will and allotted his property to the heirs of the appellant and after his death the appellant's heirs were eligible for units in this property.

1. Jaya Maganlal Punjani Date of birth 15-2-50
2. Pushpa Harishankar Bhatt " " 13-9-42
3. Kantilal Vajeshankar " " 18-11-32
4. Manglaben Nathubhai " " 17-7-23
5. Lilavantiben Dayashanker " " 4-3-33

Vijayaben daughter of Hiralal Kapta was also at that time major and at present her age is 55 years. Hence they were all eligible for units in 1976 they were all major and eligible for units."

Thus, it appears that, according to learned Tribunal, the 5 legatees were entitled to have their share in the land in question. It was also the view expressed by the learned Tribunal that one Vijayaben, who was the daughter of deceased Hiralal Chaku was also entitled to one unit. This view of the Tribunal has culminated in the orders under challenge dated March 30, 1994. 7 units came to be recognised. More over certain other lands came to be deducted from the zone of consideration. Ultimately the Tribunal has come to the conclusion that the orders passed by the Competent Authority were required to be set aside and/or modified and that the land admeasuring 4379 sq. meters only would be the excess vacant land. Both, the land holders and the State feel aggrieved with the above said orders and therefore the present two petitions.

Ld. Govt. Counsel Mr. Tushar Sompura has concentrated upon the case of the government qua only two aspects. According to learned government counsel, firstly the Tribunal was at an error in recognising the Will of the deceased Narayan Chaku and to come to the conclusion that 5 legatees shown in the table aforementioned would be entitled to one unit each. The grievance being voiced by the learned government counsel was that the Tribunal could not have come to the conclusion that, there has been a valid Will executed by deceased Narayan Chaku and that, the above said 5 persons would be the legatees under the Will, each one getting the share in the equal proportion. Mr. Prashant Desai the learned counsel who appears on behalf of the land holders on the other hand urges that, the Tribunal after hearing the parties has accepted the factum of the existence of a validly executed Will and that, now, it would not be open for the State to come before this Court by filing the writ petition with a view to challenge the above said finding of fact. The reliance in this respect is being placed by Mr. Desai upon an unreported decision in Special Civil Application No. 13290 of 1994 decided on July 12, 1995. In that matter it was contended on behalf of the petitioners that the property was not declared to be the ancestral property in the form which was submitted by one Sava Kala. However the Tribunal after a reference to other records had come to the conclusion that the property was ancestral. The question

was as to whether the above said finding of fact could be questioned before this Court in a writ petition. The Ld. Single Judge was pleased to express the opinion that the finding of fact arrived at by the Tribunal in lawful exercise of his powers cannot be interfered with, and that, therefore, no valid ground was made out for invoking the writ jurisdiction of this Court against the impugned orders. Taking this view the petition came to be rejected.

Here also it shall have to be appreciated that, there has been a finding of fact arrived at by the Tribunal in the lawful exercise of its powers. A finding of fact has been recorded by saying that the property in question belonged to one Chaku Bhagwanji Kapata, and on his death two brothers, namely Hiralal Chaku and Narayan Chaku had become the owners and occupants of the land in question. It is also accepted by the Tribunal in lawful exercise of his powers that, out of this two brothers, Narayan Chaku had died on June 24, 1970 at Jamnagar, leaving behind him a valid Will executed by him on February 02, 1969. There is also a further finding of fact recorded by the learned Tribunal that, under the Will of the deceased Narayan Chaku Kapata, the above said 5 persons would be the legatees and they would inherit the property under the Testamentary Succession. These findings of facts have been recorded by the Tribunal after hearing the parties and upon the perusal of the necessary material, including the Revenue Record in which this incidents have been reflected. I do not therefore find any justifiable reason to interfere in my writ jurisdiction and to upset the above said finding of facts.

Ld. Govt. Counsel wanted to urge that, this fact finding could have been done by the Competent Authority alone and not by the Tribunal. But it should not be overlooked that the Tribunal was hearing the appeal and the above said finding of facts have been recorded in the lawful exercise of the appellate powers of the Tribunal, after affording reasonable opportunity of being heard to the parties and upon a careful analysis of the entire material which was available on the file. The record which was before the learned Tribunal would not permit me to take a different view by saying that, either there was no Will or that there was not a valid Will, or that there was not a valid testamentary disposition in favour of the above said 5 persons. In view of this position, the above said finding of facts recorded by the learned Tribunal shall have to be accepted.

Ld. Govt. Counsel Mr. Sompura wanted to urge that, Vijayaben was not entitled to a separate unit. Ld. Govt. Counsel wanted to raise very many contentions in support of the above said broad and general proposition or contention. Any how this exercise is found not to be necessary in view of a candid concession coming from learned counsel Mr. Prashant Desai for the land holders, saying that, they do not insist for the unit in favour of Vijayaben daughter of Hiralal Kapata. This statement or concession comes from learned counsel Mr. Prashant Desai in a peculiar facts & circumstances of the case. This being so the grievance of the State shall have to be accepted qua one unit of Vijayaben Kapata. The other contentions coming from learned government counsel shall have to be discarded. As the matters are getting finally decided by this orders, I do not see any necessity to remand the matter to the Competent Authority as urged by Ld. Govt. Counsel Mr. Sompura.

Therefore, the petition filed by the State, namely Special Civil Application No. 535 of 1996 succeeds only upon a limited question regarding the unit be granted to Vijayaben, daughter of deceased Hiralal Chaku and rule requires to be made absolute qua the said question alone. I order accordingly. The rule is made absolute in the said petition to the above said extent only.

Special civil application no. 5175 of 1996 requires to be disposed of in view of the abovesaid orders. I order accordingly. Rule discharged.

The resultant effect would be that, the land holders shall be entitled to the above said 5 units as the legatees of deceased Narayan Chaku and that no exception can be found in this respect against the orders pronounced by the learned Tribunal. Any how the unit granted to Vijayaben, daughter of deceased Hiralal Chaku shall stand derecognised.
